

**TABC DOCKET NO. 541047**

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE TEXAS
COMMISSION, Jurisdictional Petitioner	§	
	§	
CITY OF DALLAS,	§	
PEAK'S ADDITION	§	
HOMEOWNERS' ASSOCIATION,	§	
ELIZABETH NELSON,	§	
PAULINE MEDRANO DALLAS CITY	§	
COUNCIL MEMBER – DISTRICT 2,	§	
ANGELA HUNT DALLAS CITY COUNCIL	§	
MEMBER – DISTRICT 6, Protestants	§	
	§	ALCOHOLIC
VS.	§	
	§	
Wael Fares Fares	§	
D/B/A MZ Grocery Store, Respondent	§	
Permit/License NO(s). Q446008	§	
BF446009	§	
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-08-1366)	§	BEVERAGE COMMISSION

**ORDER ADOPTING PROPOSAL FOR DECISION**

**CAME ON FOR CONSIDERATION** this 8<sup>th</sup> day of January 2009, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Jerry Van Hamme. The hearing convened on August 22, 2008 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on October 21, 2008. The Proposal for Decision was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. Exceptions and Reply to Exceptions were filed to which the Administrative Law Judge replied and recommended that no changes or amendments be made to the Proposal for Decision.

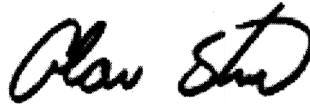
The Administrator of the Texas Alcoholic Beverage Commission after review and due consideration of the Proposal for Decision adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, that are contained in the Proposal for Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

**IT IS THEREFORE ORDERED** by the Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's renewal application is hereby **DENIED**.

This Order will become final and enforceable on February 2, 2009 unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties in the manner indicated below.

**SIGNED** this the 8th day of January, 2009, at Austin, Texas.



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Alan Steen, Administrator  
Texas Alcoholic Beverage Commission

**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
6333 Forest Park Road, Suite 150-A  
Dallas, Texas 75235  
**VIA FACSIMILE (214) 956-8611**

David C. Hill  
**ATTORNEY FOR RESPONDENT**  
Preston Commons West  
8117 Preston Road  
Suite 300  
Dallas, Texas 75225  
**VIA FACSIMILE (214) 706-9023**

Adam McGough  
**ATTORNEY FOR PROTESTANT**  
City of Dallas  
4545 Bryan Street  
Dallas, Texas 75204  
**VIA FACSIMILE (214) 670-0622**

Walker M. Duke  
**ATTORNEY FOR PROTESTANT**  
(Peak's Addition Homeowners' Association)  
8080 N. Central Expressway  
Suite 1300, LB50  
Dallas, Texas 75206  
**VIA FACSIMILE (214) 891-8010**

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

October 21, 2008

Alan Steen  
Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive  
Austin, Texas 78731

**VIA FACSIMILE 512/206-3203**

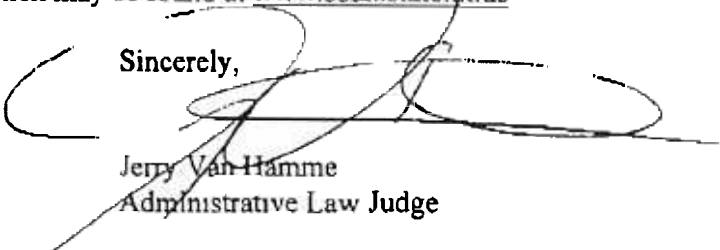
**RE: Docket No. 458-08-1366 Texas Alcoholic Beverage Commission V. Wael Fares  
Fares d/b/a MZ Grocery**

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us)

Sincerely,

  
Jerry Van Hamme  
Administrative Law Judge

JVH/slp  
Enclosure

xc Sandra Patton, Staff Attorney, Texas Alcoholic Beverage Commission, **VIA FACSIMILE 713/426-7965**  
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, **VIA FACSIMILE 512/206-3498**  
David Hill, Attorney for Respondent, MZ Grocery, **VIA FACSIMILE 214/706-9023**  
Walker Duke, Attorney for Peaks Homeowners Association, **VIA FACSIMILE 214/891-8010**  
Angela Hunt, Protestant, **VIA FACSIMILE 214/670-1847**  
Pauline Medrano, Protestant, **VIA FACSIMILE 214/670-1847**  
Elizabeth Nelson, Protestant, **VIA REGULAR MAIL, 4403 Worth, Dallas, TX 75246**  
Adam McGough, Assistant City Attorney for the City of Dallas, **VIA FACSIMILE 214/670-7888**

**DOCKET NO. 458-08-1366**

<b>TEXAS ALCOHOLIC BEVERAGE</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>COMMISSION, Petitioner,</b>	§	
	§	
<b>CITY OF DALLAS, PEAK'S</b>	§	
<b>ADDITION HOMEOWNERS'</b>	§	
<b>ASSOCIATION, ELIZABETH</b>	§	
<b>NELSON, PAULINE MEDRANO -</b>	§	
<b>DALLAS CITY COUNCIL MEMBER</b>	§	
<b>DISTRICT 2, ANGELA HUNT -</b>	§	
<b>DALLAS CITY COUNCIL MEMBER</b>	§	<b>OF</b>
<b>DISTRICT 6,</b>	§	
<b>Protestants</b>	§	
	§	
<b>V.</b>	§	
	§	
<b>Wael Fares Fares d/b/a</b>	§	
<b>MZ GROCERY STORE,</b>	§	
<b>Respondent</b>	§	
	§	
<b>DALLAS COUNTY, TEXAS</b>	§	
<b>(TABC CASE NO. 541047)</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

Wael Fares Fares, doing business as MZ Grocery, 4220 Worth, Dallas, Dallas County, Texas (Respondent) is the holder of a Wine Only Package Store Permit, Q-446008, and Beer Retailer's Off Premise License, BF-446009. Protestants City of Dallas, Peak's Addition Homeowners' Association, and individuals living near Respondent's location, protested Respondent's permit and license renewal application, asserting the renewal should be denied based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency; that Respondent is located too close to a public school to legally sell alcoholic beverages; and that Respondent submitted false answers on its renewal application form. The staff (Staff) of the Texas Alcoholic Beverage Commission (Commission) took the position that the Commission was the jurisdictional

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petitioner in this matter only and did not join in the protest. The Administrative Law Judge (ALJ) recommends that the requested renewal not be granted by the Commission.

### **I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

No contested issues of notice, jurisdiction, or venue were raised in this proceeding. Therefore, these matters are set out in the findings of fact and conclusions of law without further discussion here.

On August 22, 2008, a public hearing was held before Jerry Van Hamme, ALJ, at the State Office of Administrative Hearings, 6333 Forest Park Road, Dallas, Texas. Staff was represented by Sandra Patton, attorney. Protestant City of Dallas was represented by Adam McGough, attorney. Protestant Peak's Addition Homeowners' Association and individual homeowners were represented by Walter Duke, attorney. The record was closed on that date.

### **II. LEGAL STANDARDS AND APPLICABLE LAW**

The commission or administrator may refuse to issue an original or renewal permit if it has reasonable grounds to believe and finds that the place or manner in which the applicant may conduct its business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8). The commission or administrator may also cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee conducted its business in a place or manner which warrants the cancellation or suspension of the license based on the general welfare, health, peace, morals, safety, and sense of decency of the people. TEX. ALCO. BEV. CODE ANN. § 61.71(a)(17).

### **III. EVIDENCE**

#### **A. Staff's Evidence and Contentions**

On June 15, 1984, the Commission issued a Wine and Beer Retailer's Off Premise Permit to Skipper Beverage Company, Inc., doing business as Skipper Beverage Company, Inc., 4220 Worth, Dallas, Dallas County, Texas. That permit expired on June 14, 1991. On March 14, 1991, a Wine Only Package Store Permit and Beer Retailer's Off Premise License were issued to Ali Aref Aleqassem doing business as MZ Grocery at the same address. That license and permit expired March 13, 1992. On July 9, 1992, a Wine Only Package Store Permit and Beer Retailer's Off Premise License were issued to W. Z. Corporation, doing business as MZ Grocery at the same address. That license and permit expired July 8, 1993. On June 4, 1993, a Wine Only Package Store Permit and Beer Retailer's Off Premise License were issued to Mohamad Ghassan Abouzaher doing business as MZ Grocery at the same address. That license and permit expired June 3, 1994. On March 2, 1994, a Wine Only Package Store Permit and Beer Retailer's Off Premise License were issued to Fitiana Ali Fares, doing business as MZ Grocery at the same address. That license and permit expired March 1, 1999. (TABC Ex. No. 2).

On February 8, 1999, a Wine Only Package Store Permit, Q-446008, and Beer Retailer's Off Premise License, BF-446009, were issued to Wael Fares Fares, doing business as MZ Grocery at the same address. That license and permit have been continuously renewed. (TABC Ex. No. 1).

#### **B. Protestant's Evidence and Contentions**

##### **1. Documents**

Protestants presented letters from Pauline Medrano, Dallas City Councilmember, District 2,

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stating that in her opinion the manner in which Respondent has conducted his business at the licensed premises harms the general welfare, health, peace, morals, and safety of the people living in the neighborhoods surrounding Respondent's business. (Protestant Ex. Nos. 15 & 15c).

Protestants presented letters from Angela Hunt, Dallas City Councilmember, District 11, expressing her strong opposition to the renewal of Respondent's license because, in her opinion, the manner in which Respondent has conducted his business at the licensed premises has harmed the general welfare, health, peace, morals, and safety of the people living in the neighborhoods surrounding Respondent's business. (Protestant Ex. Nos. 15 & 15B).

A letter from David Kunkle, Dallas Chief of Police, was presented by Protestants expressing his strong recommendation that Respondent's license not be renewed. (Protestant Ex. No. 15A).

Charles Cox, Pastor of the Grace United Methodist Church, and Rev. James Walker, President of the East Dallas Cooperative Parish, submitted individual letters stating that, in their opinion, Respondent's application for renewal should not be granted. (Protestant Ex. No. 15).

Letters were also presented from Mary Beth and Nathan Galbreath, Steven Lee Bourn, Jean Lamberry, and James Greeson, residents in the local area, opposing Respondent's license and permit renewal. (Protestant Ex. No. 15).

## **2. Dawn Baxter**

Dawn Baxter, a code enforcement officer for the City of Dallas, testified she visited Respondent's location on August 12, 2008, and observed a number of city code violations, including improper signage, inadequate electrical wiring, litter in the parking lot, graffiti, evidence that vagrants might be living behind Respondent's building, and plumbing that did not meet required code standards. She testified she could have written 15 code violation citations based on her

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inspection of Respondent's location. In her opinion, Respondent's premises are substandard because of the number of city code violations.

On September 11, 2007, she measured the distance from property line to property line between Respondent's building and Zaragosa Elementary School, which is located across the street from Respondent's premises.<sup>1</sup> According to her measurements, the distance between Respondent's location and Zaragosa Elementary School is 53 feet. She further testified that another elementary school, Davy Crockett Elementary School, has a "zero lot line" that it shares with Respondent's property line. Davy Crockett Elementary School originally opened in 1903 and is now used as a school administration building. Based on her measurements of the distances between Respondent's location and these two schools, she testified that Respondent's answers on its Application For a Retailer's Permit or License for questions 10C1a, C2, and D, wherein Respondent stated that its licensed premises were not within 300 feet or 1,000 feet of a public school, were false. (TABC Ex. No. 3, p. 10; Protestant Ex. No. 7).

She further testified that although the Dallas City Secretary issued a certificate on January 7, 1998, certifying that Respondent's permit/license was not prohibited by any Dallas charter or ordinance (Respondent Ex. No. 2), that certification, in her opinion, may have been issued in error. She also testified that the distance requirements between establishments licensed to sell alcoholic beverages and schools set forth in Dallas City Ordinance Chapter 6, § 6-4, as amended by Dallas City Ordinance 22537 in 1995 (Respondent Ex. No. 3a), did not apply to licensees if less than 50 per cent of the licensee's gross receipts resulted from the sale of alcoholic beverages (Dallas City Ordinance Chapter 6, § 6-4(a)(2)(B)); she did not know if Respondent had been grandfathered pursuant to Dallas City Ordinance Chapter 6, § 6-4; nor did she know whether Respondent's permit and license had at any time been suspended (Dallas City Ordinance Chapter 6, § 6-4(d)).

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<sup>1</sup> Measuring from property line to property line is the standard set forth in Dallas City Ordinance Chapter 6, § 6-4(c).



**Dallas City Council Member Line Medina**

Dallas City Council Member Line Medina, District 2, testified that Respondent previously worked in the district office and worked directly for the principal of Zaragosa Elementary School. Zaragosa Elementary School opened in 1994 and has an enrollment of approximately 600-650 children. Respondent testified she has heard complaints about Respondent from both the home and neighborhood association and that within 40 days prior to the hearing she personally observed city police and police Respondent's location containing people who were drinking alcohol beverages. Respondent's parking lot is adjacent to the Respondent's elementary school. She believes the alcohol consumption that occurs at Respondent's premises during the Respondent's failure to keep the premises clean constitutes a public nuisance. The home is located near the school and the school has an after-school program that keeps children there until 4:00 or 5:00.

**Aaron Delaney**

Aaron Delaney, City of Dallas Building Inspector, testified that Building Inspector Applicant and Certified Occupancy dated September 1999 and January 1994 for Respondent's premises show that beer and alcohol are consumed on the premises, but that the City of Dallas Occupancy dated March 2000 shows no measurements from Respondent's location to the school. Respondent filed the application. (Respondent's Affidavit).

**Elizabeth Nelson**

Elizabeth Nelson testified that she works at the street level and does not live from Respondent's location. 004 and can Respondent's front porch was used from the front porch every day from 11:00 AM to 1:00 PM that he personally observed gang-related drug activity by shooting occur in Respondent's parking lot. There are five teenagers congregating

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in Respondent's parking lot when a vehicle drove by. She heard approximately 10 rounds fired. One person was hit. This event, occurring this close to her home, was the catalyst that initiated the protest against Respondent's license renewal.

She testified she has frequently seen gang members on Respondent's premises, that one or more gangs have used Respondent's premises as a destination point in their forays through the neighborhood, and that she was given a hand-drawn poster of gang-related symbols that was found near Respondent's location (Protestant Ex. No. 12). Although the amount of gang-related activity has decreased recently, apparently attributable to recent arrests, the area still has gang activity, and that activity is frequently observable at Respondent's location.

She has also observed intoxicated people in Respondent's parking lot. Approximately two weeks prior to the hearing she personally observed and photographed an individual lying passed out in Respondent's parking lot (Protestant Ex. No. 13). He was clearly observable from the street and from Respondent's building. She has also observed what appeared to be prostitution and drug-related activity occurring at and around Respondent's location. In her opinion, allowing people who are engaged in this kind of behavior to loiter around Respondent's premises contributes to crimes occurring around the premises, particularly when the repeated loitering involves the same people, which she has observed.

She further testified she is aware of other retail establishments in the area that sell alcoholic beverages, but is unaware of any other establishment that has the kind of criminal activity associated with it like Respondent's. Accordingly, she has not felt that any other establishment's licenses should be protested.

**6. John William Brasher**

J.W. Brasher testified he is the president of the Peak's Addition Homeowners' Association

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(P.AHA), which Protestant this matter and is made up of more than 2700 people. AHA opposes the renewal of Respondent's license because of the on-going drinking in Respondent's parking lot, Respondent selling alcoholic beverages in proximity to Zaragosa Elementary School, and because Respondent does not keep its location clean. A petition of approximately 75 signatures by AHA members opposing Respondent's license renewal was presented into evidence (Protestant Ex. No. 1).

Mr. Brasher testified AHA does not oppose other convenience stores and commercial activity in the neighborhood. In fact, the association favors "mom and pop" businesses in the neighborhood. But Respondent is different. It is apparent drug activity occurring on its property is neither clean, safe, and sells alcoholic beverages directly across the street from an elementary school. In his opinion, the way Respondent uses its property negatively affects resale values for property located near Respondent.

**Jim Anderson**

Jim Anderson is the City of Dallas Historic Preservation Officer with the Dallas Department of Development Services. He is also a resident of the Peak Suburban Addition neighborhood and has been in the area for approximately 10 years. The historic district He lives within is approximately one mile off Respondent's location. He is aware of gang members and homeless-looking persons frequenting Respondent's premises and has observed that some of them have appeared intoxicated.

**C. Respondent's Evidence and Contentions**

**Steven Boyer**

Steven Boyer is an auditor and Acting Assistant Regional Supervisor for the Commission.

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testified that as an auditor for the Commission he relies upon the Dallas City Secretary to determine whether a prospective licensee is in violation of any Dallas City Ordinances (Respondent Ex. No. 2).

He also opined that the Commission's grandfathering provision means that if a school is built within a prohibited distance from a licensee after the licensee has already been granted a license, the licensee may keep the license (TEX. ALCO. BEV. CODE ANN. § 109.59).

In reviewing the answers given to questions 10C1a, C2, and D of Respondent's Application For a Retailer's Permit or License, wherein Respondent stated that its licensed premises are not within 300 feet or 1,000 feet of a public school (TABC Ex. No. 3, p. 10; Protestant Ex. No. 7), he stated he did not know if the answers were necessarily incorrect or false, and even if false, could not testify that false answers would necessarily prevent the application from being accepted. While false answers may be grounds for nonrenewal of a license (TEX. ALCO. BEV. CODE ANN. § 11.46(a)(4)), Staff generally does not reject an application for having wrong answers. The applicant is merely requested to correct the answers.

He further testified that Staff does not do follow-up inspections for renewal applications and that based on Respondent's permit history (TABC Ex. No. 2), Staff considers Respondent's license to be grandfathered back to 1984.

## **2. Johannes Teffera**

Johannes Teffera, a Staff compliance auditor, measured the distances between Respondent's location and the two nearby schools on July 12, 2006, September 10, 2007, and March 24, 2008. His measurements showed that

- a. From property line to property line the distance between Respondent's premises and Zaragosa Elementary school is 55 feet;
- b. From property line to property line the distance between Respondent's premises and Davy Crockett Elementary School is 142 feet;

- c. From the front door of Respondent's location to the front door of Zaragosa is 478 feet;
- d. From the front door of Respondent's location to the front door of Davy Crockett is 346 feet.

He further testified that ordinarily the City of Dallas makes these measurements, not Staff.

**3. Lucy Gonzales**

Lucy Gonzales testified she has worked at Respondent's location for approximately 13 years, beginning before Mr. Fares took over, and currently works for him at this location. In her opinion, Respondent is not bad for the neighborhood. She does not sell alcoholic beverages to minors and has not seen inappropriate behavior at the location.

**4. Tommy Morgan**

Tommy Morgan is a tax consultant for Mr. Fares. In that capacity, he has made frequent visits to Respondent's establishment on various dates and times, and believes, based on his observations, that Respondent's establishment is being operated in a responsible way. He has not seen litter in the parking lot, knows that Respondent's employees keep the parking lot clean, knows that Respondent's employees tell loiterers to leave the property, and has never seen anyone drinking alcoholic beverages in Respondent's parking lot.

**5. Wael Fares**

Wael Fares is the owner and operator of MZ Grocery Store. He testified that the store is properly licensed by the City of Dallas to sell alcoholic beverages (Respondent. Ex. No. 6) and has likewise received a Certificate of Occupancy from the City of Dallas. He hired a commercial application-preparation firm to prepare the answers for his renewal application. Because he believed

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the store property had been grandfathered, he believed the answers on the renewal application concerning the distance from his establishment to the nearby schools, that being that Respondent's location was not within 300 feet or 1,000 feet of a public school, were correct.

He testified that total gross receipts from the sale of alcoholic beverages in the store constitute approximately 28-35% of the location's total sales.

He requires his employees to be TABC certified, has zero tolerance regarding sales to minors, and was recently commended by the Alliance on Underage Drinking of the Greater Dallas Council on Alcohol & Drug Abuse for refusing to sell to a minor police decoy during an underage sting operation. (Respondent Ex. Nos. 7 & 8). He also offered into evidence a petition with approximately 91 signatures and two letters from local residents supporting Respondent's sale of beer and wine at that location. (Respondent Ex. No. 9).

He denies his property is run-down. He hires a lawn service to cut the grass at his location and keeps his property clean. When Ms. Baxter conducted her code inspection of his property, he testified she informed him at the time of her inspection that the violations she found did not require immediate attention.

He denies that alcoholic beverages are consumed on his premises. He has signs posted in English and Spanish forbidding alcohol consumption on the property, and has added 24-hour surveillance cameras and additional lighting in the parking lot.

He denied that gangs or homeless people loiter on his property, and testified he has intentionally removed lower-priced items from his inventory to discourage homeless people from patronizing his store. He also denied seeing any prostitution-related behavior on his property, has no idea if gang activity occurs in the area or not, was not present on the premises when the drive-by shooting occurred in his parking lot and therefore did not know much about it, and has never seen

anyone passed out in his parking lot.

#### IV. ANALYSIS

##### A. Respondent's Proximity to Zaragosa Elementary School

Protestants argued that Respondent may not sell alcoholic beverages at its location because its property line is approximately 55 feet from the property line of Zaragosa Elementary School, and is therefore in violation of Dallas City Ordinance Chapter 6, § 6-4(a) & (c).<sup>2</sup> Respondent argued, however, that its property had been grandfathered since 1984 pursuant to Dallas City Ordinance Chapter 6, § 6-4(d)<sup>3</sup> and is therefore in compliance with Dallas City requirements.<sup>4</sup>

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<sup>2</sup> (a) No person may sell alcoholic beverages if the place of business is within:

(1) 300 feet of a public school.

(2) 1,000 feet of a public school if the city council by resolution adopts a request from the board of trustees of a school district under Section 38.007 of the Texas Education Code.

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(c) Except as otherwise provided in this subsection, the measurement of the distance between the place of business where alcoholic beverages are sold and a public ... school ... will be in a direct line from the property line of the public ... school ... to the property line of the place of business, and in a direct line across intersections.

<sup>3</sup> (d) If at the time an original alcoholic beverage permit or license is granted by the Texas Alcoholic Beverage Commission, the premises satisfies the requirements regarding distance from ... public ... schools ..., the premises will be deemed to satisfy the distance requirements of this section for all subsequent renewals of the license or permit. This subsection does not apply to the satisfaction of the distance requirement prescribed by Subsection (a)(2) of this section for a public school if the permit or license has been suspended for a violation, occurring after September 1, 1995....

<sup>4</sup> Respondent also argued that it was exempt from the 1,000 foot distance requirement because, pursuant to Dallas City Ordinance Chapter 6, 6-4(a)(2)(A) & (B), the 1,000 foot requirement does not apply to the holder of a retail on-premises consumption permit or license if less than 50 percent of the gross receipts for the premises is from the sale or service of alcoholic beverages; nor does it apply to the holder of a retail off-premises consumption permit or license if less than 50 percent of the gross receipts for the premises, excluding the sale of items subject to motor fuels tax, is from the sale or service of alcoholic beverages. No evidence was presented by Respondent, however, showing that it was the holder of a retail on-premises or off-premises consumption permit or license. Accordingly, this ordinance has not been shown to be applicable in the instant case.

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The evidence shows that this location has been licensed since 1984 and that Zaragosa did not open as a school until 1988. Because the alcoholic beverage licensing for this location predates the existence of the school, Steven Boyer, Acting Assistant Regional Supervisor and an auditor for the Commission, opined that, so far as the Commission is concerned, Respondent is grandfathered, and is, therefore, in compliance with appropriate Dallas City regulations. Given that the evidence presented by the Commission shows that Respondent's location has been licensed since 1984, the evidence supports Respondent's claim that it comes under the grandfathering provisions of the City Ordinance.

**B. Respondent's Proximity to Davy Crockett Elementary School**

Protestants, however, have a second argument. The evidence shows that Respondent has a "zero lot line" and therefore shares a property line with what used to be Davy Crockett Elementary School. The school was built in 1903 and, therefore, predates any license granted to Respondent's location.

Protestants argue that the original alcoholic beverage license granted to Respondent's location in 1984 was clearly granted in error because Davy Crockett Elementary School was obviously within 300 feet, measured property line to property line, of the licensed location at the time that license was granted. Accordingly, since the original license was granted in error, subsequent licenses should not be grandfathered from this erroneously-granted license.

As stated above, Respondent's premises is within 300 feet, measuring property line to property line, of Zaragosa Elementary School. Ordinarily, this near proximity to a school would preclude the granting of an alcoholic beverage license. However, as set forth above, Respondent's application was not precluded in the instant case because it meets the grandfathering requirements of the city ordinance. If, however, the original license was granted in error, the propriety and applicability of grandfathering Respondent's current renewal application from that originally



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three houses down from Respondent's parking lot. The shooting was gang-related. Evidence in the record shows that gang members from at least one gang were a regular presence at Respondent's location.

Neighbors and passers-by repeatedly observed Respondent's patrons openly drinking alcoholic beverages in Respondent's parking lot, and observed what appeared to be prostitution and on-going drug activity on Respondent's premises. Although Respondent presented evidence that Respondent's employees attempted to discourage loitering in Respondent's parking lot by asking patrons to drink their alcoholic beverages elsewhere, that problem had clearly not been solved as of two weeks prior to the hearing, as evidenced by the photo taken of a gentleman lying in Respondent's parking lot next to Respondent's building passed out during daylight hours (Protestant Ex. No. 13), and by Councilmember Medrano's testimony that she had seen law enforcement officers at Respondent's location approximately 40 days prior to the hearing detaining people who were drinking alcoholic beverages in the parking lot. It is apparent that the on-going problems at Respondent's premises have not been corrected.

In addition, Respondent's premises are not well-kept, with litter present in the parking lot and, during a single visit by a city code enforcement officer, approximately 15 city code violations observed, including improper signage, inadequate electrical wiring, litter in the parking lot, graffiti, evidence that vagrants might be living behind Respondent's building, and plumbing that did not meet code requirements.

The manner in which Respondent's business is carried out negatively affects property values in the neighborhood. That Respondent is located directly across the street from an elementary school makes Respondent's conduct that much more egregious.

*In Four Stars Food Mart, Inc., d/b/a Sunshine Food Mart v. Texas Alcoholic Beverage Commission*, 923 S.W.2d 266, 270 (Tex.App.—Ft. Worth 1996), an alcohol permit renewal

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application was protested by a local citizens group because criminal acts had occurred on the premises, the premises had been the site of a drive-by shooting, the premises had been the site of gang gatherings, and the store employees had taken no action to attempt to stop apparent criminal activity occurring on-site. The court found that whether an applicant has conducted his business so as to jeopardize the peace, morals, health, or safety of the general public can not be determined by a set formula, *Ex parte Velasco*, 225 S.W.2d 921, 923 (Tex. Civ.App. — Eastland 1949, no writ), but found that in this case the evidence showed that the permittee was jeopardizing the general welfare, health, peace, morals, safety, and sense of decency of the area residents.

In *Brantley d/b/a Boots & Saddle Club v. Texas Alcoholic Beverage Commission*, S.W.3d 343, 347 (Tex.App. — Texarkana 1999), the appellate court noted that the area of the proposed sale of alcoholic beverages was in a residential area across the street from the homes of eight families, near local schools, and in an area frequented by children. Concerned citizens, school officials, and a county commissioner all wrote letters opposing the issuance of the license on the grounds it would be detrimental to the general welfare of the community. Despite the fact that the applicant provided a petition with over 200 signatures in support of its application to sell alcoholic beverages, the appellate court affirmed the Commission's denial of the application based on the county judge's decision to deny the application, finding that the county judge's decision to deny the application based on these facts was reasonably supported by substantial evidence.

In the instant case, the evidence, like that set forth in the above-cited cases, shows that criminal activity has occurred on Respondent's premises, primarily in the form of public intoxication and apparent drug activity and prostitution; Respondent's premises was the site of a drive-by shooting; Respondent's premises has been the site of frequent gang gatherings; and criminal activity has occurred on-site without any appreciable or effective attempt by Respondent's employees to either stop or prevent it. However, unlike the case above, the activity occurring on Respondent's property has all occurred directly across the street from an elementary school.

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In addition, letters in opposition to Respondent's renewal application were received from Pauline Medrano, Dallas City Councilmember, District 2; Angela Hunt, Dallas City Councilmember, District 11; David Kunkle, Dallas Chief of Police; Charles Cox, Pastor of the Grace United Methodist Church; and Rev. James Walker, President of the East Dallas Cooperative Parish. In addition, a petition was signed by 75 members of the Peak's Addition Homeowners' Association in opposition to the renewal of Respondent's license and permit.

Based on the evidence in the record that Respondent's property has been an on-going and continuing source of activity detrimental to the community, the Protestants have shown, by a preponderance of the evidence, that the manner in which Respondent's business has been conducted warrants a refusal of Respondent's permit and license based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.

#### **V. RECOMMENDATION**

The ALJ recommends that Respondent's renewal application for the Wine Only Package Store Permit, Q-446008, and Beer Retailer's Off Premise License, BF-446009, issued to Wael Fares Fares, d/b/a MZ Grocery, 4220 Worth, Dallas, Dallas County, Texas, be denied.

#### **VI. FINDINGS OF FACT**

On February 8, 1999, Respondent was granted a Wine Only Package Store Permit, Q-446009, and Beer Retailer's Off-Premise License, BF-446009 for MZ Grocery Store, 4420 Worth, Dallas, Dallas County, Texas.

2. Respondent's location has been grandfathered relating to the granting of alcoholic beverage licenses since 1984.
3. The sale of alcoholic beverages at Respondent's location does not violate any Dallas City Ordinance regarding sales within 300 feet or 1,000 feet of a public school.
4. Respondent did not give false answers on its renewal application such as to warrant

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disciplinary action against Respondent or denial of Respondent's renewal application.

5. Respondent's premises are located in a residential area, with houses across the street in one direction and Zaragosa Elementary School directly across the street in another direction.
6. Zaragosa Elementary School's property line is approximately 55 feet from Respondent's property line.
7. Respondent's property has been the scene of repeated and on-going gang activity.
8. A gang-related drive-by shooting occurred in Respondent's parking lot in 2005.
9. Respondent's patrons openly and frequently consume alcoholic beverages in Respondent's parking lot.
10. Persons who appear to be intoxicated are frequently present on Respondent's property.

Activity consistent with prostitution occurs on Respondent's property

12. Activity consistent with drug activity occurs on Respondent's property.
13. Respondent's property lacks proper consistent upkeep and maintenance, and is substandard regarding adherence to Dallas City Code requirements relating to wiring, signage, plumbing, and litter.

Respondent's employees fail to consistently prevent loitering, alcoholic beverage consumption, intoxication, littering, and apparent prostitution and drug related activity on Respondent's premises.

15. Pauline Medrano, Dallas City Councilmember, District 2, requested that Respondent's permit and license not be renewed.
16. Angela Hunt, Dallas City Councilmember, District 11, requested that Respondent's permit and license not be renewed.
7. David Kunkle, Dallas Chief of Police, requested that Respondent's permit and license not be renewed.
18. Charles Cox, Pastor of the Grace United Methodist Church, requested that Respondent's permit and license not be renewed.
19. Rev. James Walker, President of the East Dallas Cooperative Parish, requested that Respondent's permit and license not be renewed.

20. The Peak's Addition Homeowners' Association requested that Respondent's permit and license not be renewed.
21. Approximately 75 individual members of the Peak's Addition Homeowners' Association individually signed a petition requesting that Respondent's permit and license not be renewed.
22. A Second Amended Notice of Hearing dated March 19, 2008, was issued by Staff notifying Applicant of the protests received against Applicant's application and informing the parties of the nature of the hearing, the statutes and rules involved, and the legal authorities under which the hearing was to be held.
23. A Continuance Order No. 4 was issued by SOAH on June 30, 2008, informing the parties of the time and place of the hearing.
24. On August 22, 2008, a public hearing was held before Jerry Van Hamme, ALJ, at the State Office of Administrative Hearings, 6333 Forest Park Road, Dallas, Texas. Staff was represented by Sandra Patton, attorney. Protestant City of Dallas was represented by Adam McGough, attorney. Protestant Peak's Addition Homeowners' Association and individual homeowners were represented by Walter Duke, attorney. The record was closed on that date.

## VII. CONCLUSIONS OF LAW

- The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Subchapter B of Chapter 5, §§ 6.01 and 11.46(a)(8).
2. The State Office of Administrative Hearings has jurisdiction to conduct the hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. ch. 2003.
  3. Proper and timely notice of the hearing was effected on all parties pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, and 1 TEX. ADMIN. CODE § 155.55.
  4. The place or manner in which the applicant conducts his business warrants the refusal of a permit and license renewal based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. TEX. ALCO. BEV. CODE ANN. §§ 11.46(a)(8) & 61.71(a)(17).
  5. Respondent's renewal application for its Wine Only Package Store Permit, Q-446008, and Beer Retailer's Off Premise License, BF-446009, issued to Wael Fares Fares, doing business

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**DALLAS OFFICE**  
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